REMARKS

Claims 1-109 are pending after entry of this paper. Claims 2-65, 80-83 and 109 remain rejected. Claims 67-79 and 84-108 have been withdrawn. Applicants reserve the right to pursue withdrawn claims in a divisional or continuing application. Applicants acknowledge the allowance of claim 1. In addition, applicants acknowledge that claim 66 has been objected to for being dependent from a rejected claim, but may be allowable if rewritten in the independent form.

Claims 2 and 4 have been amended to recite "isolating a cellulase having neutral and/or alkaline activity from the wild-type or mutant fungus." Support may be found throughout the instant specification and claims as originally filed.

No new matter has been introduced by these amendments. Reconsideration and withdrawal of the pending rejections in view of the above claim amendments and below remarks are respectfully requested.

Withdrawn Rejections

Applicants acknowledge that the rejection of claims 2-65 and 80-83 under 35 U.S.C. §112, first paragraph has been withdrawn in light of the arguments presented in the response filed on December 21, 2007 (Office Action – page 2).

Response to Rejections under 35 U.S.C. §112, second paragraph

Claims 2-23 and 109 have been rejected under 35 U.S.C. §112, second paragraph for indefiniteness. Specifically, the Examiner alleges that reciting the phrase "isolating the composition having neutral and/or alkaline cellulose [sic – cellulase] activity" renders the claim vague and indefinite. According to the Examiner, the metes and bounds of the claims are uncertain since it is unclear how "compositions" can be obtained by the method as recited (Office Action – page 2). Applicants respectfully disagree.

The Examiner suggests that the applicant may overcome the indefiniteness rejection by reciting "isolating a cellulose [sic – cellulase] having neutral and/or alkaline cellulose [sic – cellulase] activity" (Office Action – page 2). In order to expedite prosecution and without disclaimer of, or prejudice to, the subject matter recited therein, applicants have amended claims 2 and 4 to recite "isolating a cellulase having neutral and/or alkaline activity from the wild-type or mutant fungus." Support for this amendment may be found on page 6, first paragraph of the original specification. One skilled in the art would not find such language vague and indefinite as acknowledged by the Examiner and could readily understand in view of the disclosure in the specification.

Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. §112, second paragraph rejection of claims 2-23 and 109 for indefiniteness.

Response to Rejections under 35 U.S.C. §103

Claims 2-4, 6-65, 80-83 remain rejected under 35 U.S.C. §103(a) as being unpatentable over Parslow, et al. (U.S. Patent No. 4,661,289) in view of Janeckova, et al. (*Ceska*

Mykologie 31(4):206-213, 1977). According to the Examiner, Parslow allegedly teaches compositions comprising fungal cellulase, surfactants, cationic fabric-softening compound, and builders. The Examiner admits that Parslow does not teach the claimed composition comprising fungal cellulase from the genus *Chrysosporium*, in particular *Chrysosporium lucknowense*. To arrive at the claimed invention the Examiner has combined Janeckova that allegedly teaches *Chrysosporium lucknowense* isolated from soil with Parslow. To support the case of *prima facie* obviousness, the Examiner points to the post filing publication by Bukhtojarov, et al. (*Biochemistry (Mosc)* 69(5):542-551, 2004) which allegedly provides evidence that *Chrysosporium lucknowense* contains cellulolytic enzymes including endoglucanases, cellobiohydrolases and cellulases that have neutral and/or alkaline cellulase activity (referring to EG24 and EG47). The Examiner contends that it would have been obvious to one skilled in the art at the time the application was filed to modify the teachings of Parslow to utilize *Chrysosporium lucknowense* as isolated by Janeckova for the allegedly inherent cellulolytic enzymes (Office Action – page 4). Applicants respectfully disagree.

In response to the applicants' arguments filed on December 21, 2007, the Examiner cites various sections of the MPEP for support that the claimed invention is allegedly obvious. For instance, the Examiner cites MPEP 2145 on the subject of the impermissible hindsight and MPEP 2143.01 on the subject of suggestion or motivation to modify the references:

> "[a]ny judgement on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper." *In re McLaughlin* 443 F.2d 1392, 1395, 170 USPQ 209, 212 (CCPA 1971) (emphasis added).

> Obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (emphasis added).

While the Examiner provides relevant sections of the MPEP, applicants respectfully assert that the Examiner has not provided any convincing arguments to support the argument that the hindsight is permissible or that a motivation or suggestion to combine exists. For instance, the Examiner admits that Parslow does not teach the claimed composition comprising fungal cellulase from the genus *Chrysosporium*, in particular *Chrysosporium lucknowense* (Office Action – page 2). Yet, the Examiner claims that an artisan would have been motivated at the time the invention was made to modify the teachings of Parslow to use cellulolytic enzymes from *Chrysosporium lucknowense* in view of Janeckova. In fact, the Examiner recognizes that Janeckova **does not** disclose the cellulolytic enzymes from *Chrysosporium lucknowense* or any species for that matter that have neutral/alkaline cellulase activity. Janeckova merely isolates 37 species of soil fungi corresponding to fourteen genera, *i.e.*, *Absidia, Cunninghamell, Mucor, Rhizopus, Acremonium, Aspergillus, Fusarium, Geotrichum, Chrysosporium, Paecilomyces, Penicillium, Tolypocladium, Trichoderma* and *Verticillum*. By pointing to the post-filing Bukhtojarov publication for guidance to establish that the *Chrysosporium lucknowense* is able to produce various cellulases, the Examiner implicitly admits that one skilled in the art did not possess such knowledge at the time the application was filed, *i.e.*, 1999. Therefore, the skilled artisan could not have combined the teachings of Parslow and Janeckova to arrive at the claimed invention. Thus, applicants assert that the Examiner has not established *prima facie* case of obviousness.

Furthermore, Janeckova clearly characterized *Chrysosporium lucknowense* as keratinophilic fungi (ABSTRACT), *i.e.,* having the ability to decompose keratinic substrates, such as α-keratins. An artisan could readily distinguish between the ability of a fungus to decompose cellulose (polysaccharides) and the ability of a fungus to decompose keratin (insoluble fibrous protein) and would not consider them to be the same or equivalent. Therefore, Janeckova clearly teaches away from using the *Chrysosporium lucknowense* fungal species in the detergent composition of Parslow, because Janeckova is silent on the ability of these species to decompose cellulose and clearly points to their ability to decompose keratinic substrates. Moreover, Parslow discloses that cellulases disadvantageously only exert a softening effect on cellulosic fibers (Col. 1, lns. 64-65). The mere fact that Janeckova has isolated various fungal species from soil and that one of them happened to be *Chrysosporium lucknowense* does not enable one skilled in the art to arrive at the claimed invention, *i.e.,* compositions containing cellulases from *Chrysosporium lucknowense* that have neutral/alkaline activity. One skilled in the art would not look to the limited disclosure of Janeckova in combination with Parslow to arrive at the claimed invention. Thus, as demonstrated above, neither of the cited references, either alone or in combination, discloses a composition obtained from *Chrysosporium lucknowense* that has neutral/alkaline cellulase activity.

In summary, the Examiner has used impermissible hindsight to suggest that an artisan at the time the application was filed would be able to combine the teachings of Parslow and Janeckova to produce cellulase compositions obtained from *Chrysosporium lucknowense*, since neither Parslow nor Janeckova discloses compositions isolated from a *Chrysosporium* species with neutral/alkaline cellulase activity. Furthermore, Janeckova teaches away from using a *Chrysosporium* species, because Chrysosporium lucknowense was characterized as a

keratinophilic fungi having the ability to decompose keratinic substrates, while Parslow is directed to cellulases affecting cellulolytic fibers.

In light of the above arguments, applicants assert that neither the combination of nor Parslow and Janeckova alone satisfies all of the elements of the claimed composition. Janeckova does not remedy the deficiencies in the composition described by Parslow and in fact teaches away from using a *Chrysosporium* species. Therefore, the combination of Parslow and Janeckova does not make obvious the claimed invention. Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. §103(a) rejection of claims 2-4, 6-65 and 80-83 in view of the aforementioned remarks.

CONCLUSION

Based on the foregoing amendments and remarks, the applicants respectfully request reconsideration and withdrawal of the pending rejections and allowance of this application. The applicants respectfully submit that the instant application is in condition for allowance. Entry of the amendment and an action passing this case to issue is therefore respectfully requested. In the event that a telephone conference would facilitate examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided. Favorable action by the Examiner is earnestly solicited.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. **13-4500**, Order No. 3123-4000US2.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **13-4500**, Order No. 3123-4000US2.

Respectfully submitted,
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